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TRANSPORTATION INSURANCE COMPANY and
CONTINENTAL CASUALTY COMPANY

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TRANSPORTATION INSURANCE
COMPANY, an Illinois corporation, and
CONTINENTAL CASUALTY COMPANY, an
Illinois corporation,

Plaintiffs,

vs.

CASH 1, LLC d/b/a Cash 1, a Nevada limited
liability company; and SHARON PRATT, a
Nevada resident,

Defendants.

Case No.

**PLAINTIFFS' COMPLAINT FOR
DECLARATORY JUDGMENT**

JURY DEMAND

Plaintiffs Transportation Insurance Company ("TPI") and Continental Casualty Company ("CCC"), foreign companies, seek a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure for purposes of determining a question of actual, immediate controversy between the parties. Plaintiffs respectfully allege as follows:

I. NATURE OF ACTION AND RELIEF SOUGHT

1. This is an action for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 for the purpose of determining the parties' rights and obligations, if any, with regard to an insurance policy.

2. Plaintiffs seek a declaration that they have no duty to defend or indemnify Cash 1, LLC d/b/a Cash 1 ("Cash 1") with regard to a putative class action lawsuit filed against Cash 1 and others, captioned *Bates v. Dollar Loan Center, LLC d/b/a Dollar Loan Center d/b/a Loan Shack*,

Case No. 2:13-cv-01731-KJD-CWH, by Sharon Pratt and others, which is pending in the United States District Court for the District of Nevada (hereinafter the “Underlying Suit”), and which was filed on or about September 20, 2013.

3. Cash 1 tendered the Underlying Suit to TPI and CCC and requested defense and indemnity coverage for the Underlying Suit under a primary liability policy issued by TPI to CM Retail Management, Inc. (CM Retail) and Cash 1 (“the TPI Primary Policy”) and a commercial umbrella policy issued by CCC to CM Retail (“the CCC Umbrella Policy”) (hereinafter jointly “the Policies”).

4. TPI and CCC disclaimed coverage, including any duty to defend Cash 1 in the Underlying Suit, under the Policies.

5. An actual, immediate controversy exists among the parties regarding whether insurance coverage is afforded to Cash 1 under the Policies for the claims asserted and the alleged damages sought against Cash 1 in the Underlying Suit.

II. THE PARTIES

6. Transportation Insurance Company (“TPI”) is a corporation organized and existing under the laws of Illinois with its principal place of business in Chicago, Illinois.

7. Continental Casualty Company (“CCC”) is a corporation organized and existing under the laws of Illinois with its principal place of business in Chicago, Illinois.

8. Cash 1, LLC (“Cash 1”) is a limited liability company, with its principal place of business in Nevada.

9. Sharon Pratt is a resident of Nevada. Because Ms. Pratt initiated the Underlying Suit against Cash 1, she is a necessary party and is named in this declaratory judgment action so that she will be bound by any judgment rendered herein.

III. JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332. There is complete diversity of citizenship among the parties and the matter in controversy exceeds the sum of \$75,000, exclusive of interest, attorney’s fees and costs.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) and (c) because a substantial part of the events or omissions giving rise to the claims asserted below occurred within this District.

IV. THE UNDERLYING SUIT

12. The Underlying Suit was filed in the United States District Court for the District of Nevada on or about September 20, 2013. (A true and correct copy of the complaint filed in the Underlying Suit [the “Underlying Complaint”] is attached as **Exhibit A**.)

13. The Underlying Suit was filed by several plaintiffs, including Ms. Pratt. Only Ms. Pratt files this suit against Cash 1 as a putative class action.

14. With respect to Cash 1, the Underlying Complaint contains allegations of negligent violations of the federal Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”); willful violations of the TCPA; and violations of Nevada Deceptive Trade Practices Act, NRS 41.600(2)(e) (“the DTPA”). (Ex. A, ¶¶ 231 – 243.)

15. Ms. Pratt brings the Underlying Complaint against Cash 1 on behalf of herself and as a putative class action on behalf of the “Cash 1 Class Members.” (Ex. A, ¶ 180.)

16. The Underlying Complaint contains allegations that the Underlying Defendants, including Cash 1, “negligently, knowingly and/or willingly, invad[ed] Plaintiffs’ privacy by using an automatic telephone dialing system (“ATDS”) to initiate a telephone call to Plaintiffs on their cellular telephones without prior express consent in violation of the Telephone Consumer Protection Act (“TCPA).” (Ex. A, ¶ 4.)

17. The Underlying Complaint contains allegations that Cash 1 “is primarily involved in the business of providing short-term, high interest loans to its customers” and that the “Cash 1 application for a loan requires each prospective borrower to provide contact information and three references.” (Ex. A, ¶¶ 125 – 127.)

18. The Underlying Complaint contains allegations that Cash 1 “will not approve a loan without the names of at least three references that can be verified,” and that Cash 1 does not contact the references to verify the information provided in the borrower’s application. Instead, Cash 1 verifies the “[r]eferences identity and phone number for the purpose of harassing the References if

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the borrower defaults on the loan payment.” (Ex. A, ¶¶ 130, 132.)

19. The Underlying Complaint contains allegations that when a borrower defaults on a loan, “Cash 1 or its agents attempts [*sic*] to collect the loan” and “contacts the References provided by the delinquent borrower at the phone number the borrower provided on his or her Cash 1 Loan Application.” The Underlying Complaint also contains allegations that, “[o]n information and belief, Cash 1 uses an ATDS to call a borrower’s References if the account becomes delinquent” and that Cash 1 and its agents “do not obtain the References consents [*sic*] before using an ATDS to call their cellular phone numbers.” (Ex. A, ¶¶ 134 - 137.)

20. Per the Underlying Complaint, in January 2013, Ms. Pratt “received numerous telephone calls on her cellular telephone from an individual purporting to call on behalf of Cash 1 regarding the debt of her friend, Latoya Johnson.” The Underlying Complaint contains allegations that Cash 1 told Ms. Pratt that the calls to her cellular telephone would continue until Ms. Johnson repaid her debt, Cash 1 continued to call Ms. Pratt’s cellular telephone despite her request that Cash 1 cease all contact, and, upon information and belief, Cash 1 used an ATDS to contact Ms. Pratt’s cellular telephone. (Ex. A, ¶¶ 140-144.)

21. Per the Underlying Complaint, Ms. Pratt, referred to therein as the “Cash 1 Class Representative,” brings the Underlying Suit on behalf of herself and the Cash 1 Class, which is defined as:

All persons within the United States who, on or after September 20, 2009, received a non-emergency telephone call from Cash 1 to a cellular telephone:

1. That was placed using an automatic telephone dialing system or an artificial prerecorded voice;
2. Regarding a borrower other than the recipient of the call; and
3. Who did not provide prior express consent for such calls.

(Referred to in the Underlying Complaint as the “Cash 1 Class Members”). (Ex. A, ¶ 180.)

22. Count 10 of the Underlying Complaint contains the allegation that Cash 1 negligently violated the TCPA by using an ATDS to contact “the Cash 1 Class Representative and Class Members on their cellular telephones, without obtaining the express consent of the Cash 1 Class Representative and Class Members, in violation of the TCPA.” As relief for this Count, Pratt and

the Cash 1 Class seek statutory damages of \$500 for “each and every call in violation of the TCPA” and injunctive relief. (Ex. A, ¶¶ 231-234.)

23. Count 11 of the Underlying Complaint contains the allegation that Cash 1 knowingly and/or willfully violated the TCPA by using an ATDS to contact “the Cash 1 Class Representative and Class Members on their cellular telephones, without obtaining the express consent of the Cash 1 Class Representative and Class Members, in violation of the TCPA.” As relief for this Count, Pratt and the Cash 1 Class seek statutory damages of up to \$1,500 for “each and every call in violation of the TCPA” and injunctive relief. (Ex. A, ¶¶ 235-238.)

24. Count 12 of the Underlying Complaint alleges that Cash 1 “willfully committed act(s) of consumer fraud in violation of [Nevada’s] Deceptive Practices Act (NRS 41.600(2)(e)) by:

- a. Knowingly making false representations in transactions to borrowers that ‘references’ will be contacted for credit reference, when, in reality, Cash 1 would only contact the ‘references’ if the borrower defaulted on his or her loan. *See* NRS 598.0915(15).
- b. Failing to disclose a material fact in connection with the lending of money to borrowers by failing to disclose Cash 1 would contact the borrower’s ‘references’ if the borrower defaulted on his or her loan. NRS 598.0923(2).
- c. Violating the TCPA by contacting the Cash 1 Class Members on their cellular telephones using an ATDS without their prior express consent. NRS 598.0923(2).”

(Ex. A, ¶¶ 239-40.)

25. The Underlying Complaint contains an allegation in Count 12 that “Cash 1’s acts of consumer fraud caused the Cash 1 Class Representative and Class Members to suffer damage by invading their privacy and causing them to incur additional cellular phone charges and/or lose their allotted cellular telephone minutes. *See* NRS 41.600(3)(a).” As relief for this Count, Pratt and the Cash 1 Class members seek injunctive relief and attorney’s fees and costs. (Ex. A, ¶¶ 241 - 243.)

V. THE POLICIES

A. The TPI Primary Policy

26. TPI issued a primary commercial general liability coverage to CM Retail Management under policy number B 508555444 for the November 1, 2012 to November 1, 2013 policy period (“the TPI Primary Policy”). (A true and correct copy of the TPI Primary Policy is attached hereto as **Exhibit B**.) Cash 1 was added as an additional named insured to the TPI Primary

1 Policy by a policy endorsement effective November 1, 2012. (See Ex. B, Additional Named Insured
2 Endorsement Declarations, p. 2.)

3 27. The TPI Primary Policy provides Business Liability Coverage for "bodily injury,"
4 "property damage," and "personal and advertising injury" as follows:

5 **A. Coverages**

6
7 **1. Business Liability (Bodily Injury, Property Damage, Personal and Advertising Injury)**

8 **a.** We will pay those sums that the insured becomes legally obligated to pay as damages
9 because of "bodily injury," "property damage" or "personal and advertising injury" to
10 which this insurance applies. We will have the right and duty to defend the insured
11 against any "suit" seeking those damages. However, we will have no duty to defend
12 the insured against any "suit" seeking damages for "bodily injury," "property
13 damage" or "personal and advertising injury," to which this insurance does not apply.
14 We may at our discretion, investigate any "occurrence" and settle any claim or "suit"
15 that may result. But:

- 16 (1) The amount we will pay for damages is limited as described in Section **D** –
17 Liability And Medical Expenses Limits Of Insurance; and
- 18 (2) Our right and duty to defend end when we have used up the applicable limit of
19 insurance in the payment of judgments or settlements or medical expenses to
20 which this insurance applies.

21 No other obligation or liability to pay sums or perform acts or services is covered
22 unless explicitly provided for under Coverage Extension – Supplementary Payments.

23 **b.** This insurance applies:

24 (1) To "bodily injury" and "property damage" only if:

25 (a) The "bodily injury" or "property damage" is caused by an "occurrence" that
26 takes place in the "coverage territory";

27 (b) The "bodily injury" or "property damage" occurs during the policy period;
28 and

(c) Prior to the policy period, no insured listed under Paragraph **C.1. Who Is An**
Insured and no "employee" authorized by you to give or receive notice of an
"occurrence" or claim, knew that the "bodily injury" or "property damage"
had occurred, in whole or in part. If such a listed insured or authorized
"employee" knew, prior to the policy period, that the "bodily injury" or
"property damage" occurred, then any continuation, change or resumption of

such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known before the policy period.

- (2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period . . .

(See Ex. B [Form No. SB-300000-C, p. 1].)

28. The TPI Primary Policy defines "bodily injury" as:

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

(See Ex. B [Form No. SB-300000-C, p. 13].)

29. The TPI Primary Policy defines "occurrence" as:

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

(See Ex. B [Form No. SB-300000-C, p. 14].)

30. The TPI Primary Policy defines "personal and advertising injury" as:

14. "Personal and advertising injury" means injury, including consequential "bodily injury," arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f. The use of another's advertising idea in your "advertisement"; or
- g. 1. Infringing upon another's copyright, trade dress or slogan in your "advertisement."

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(See Ex. B [Form No. SB-300000-C, pp. 14 – 15].)

31. The TPI Primary Policy defines “property damage” as:

17. "Property damage" means:

- a.** Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b.** Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

(See Ex. B [Form No. SB-300000-C, p. 15].)

32. The TPI Primary Policy contains the following exclusions applicable to the Business Liability Coverage. The policy provides that “[t]his insurance does not apply to:”

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

* * *

j. Professional Services

“Bodily injury,” “property damage,” “personal and advertising injury” caused by the rendering or failure to render any professional service . . .”

* * *

p. Personal And Advertising Injury

"Personal and advertising injury":

(1) Caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury";

* * *

(3) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period . . ."

(See Ex. B [Form No. SB-300000-C, pp. 3, 7].)

33. The TPI Primary Policy contains an exclusion, titled "Recording and Distribution of Material or Information in Violation of Law Exclusion" (hereinafter the "Recording and Distribution of Material Exclusion"), which applies to the policy's "bodily injury," "property damage," and "personal and advertising injury" liability coverage. The "Recording and Distribution of Material" exclusion provides in relevant part that:

A. The following exclusion is added to Section B. EXCLUSIONS of the Businessowners Liability Coverage Form:

2. Exclusions

This insurance does not apply to:

q. Recording and Distribution of Material Or Information in Violation of Law

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or

- 1 (4) Any federal, state or local statute, ordinance or regulation, other than the
2 TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and
3 additions, that addresses, prohibits or limits the printing, dissemination,
4 disposal, collecting, recording, sending, transmitting, communicating or
5 distribution of material or information.

6 **B.** The following exclusion is added to Section B. EXCLUSIONS, Paragraph p. Personal and
7 Advertising Injury:

8 **2. Exclusions**

9 This Insurance does not apply to:

10 **(15) Recording and Distribution of Material Or Information In Violation of Law**

11 "Personal and advertising injury" arising directly or indirectly out of any action or omission
12 that violates or is alleged to violate:

- 13 (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or
14 addition to such law;
15 (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
16 (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law,
17 including the Fair and Accurate Credit Transaction Act (FACTA); or
18 (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-
19 SPAM Act of 2003 or FCRA and their amendments and additions, that addresses,
20 prohibits or limits the printing, dissemination, disposal, collecting, recording, sending,
21 transmitting, communicating or distribution of material or information.

22 (See Ex. B [Form No. SB-300849-A].)

23 **B. The Umbrella Policy**

24 34. CCC issued a Commercial Umbrella Plus policy to CM Retail under policy no. B
25 508555461 for the November 1, 2012 to November 1, 2013 policy period (hereinafter the CCC
26 Umbrella Policy). (A true and accurate copy of the CCC Umbrella Policy is attached hereto as
27 **Exhibit C.**)

28 35. The CCC Umbrella Policy contains the following insuring agreement, in which CCC
 agrees to provide umbrella coverage for "bodily injury," "property damage," and "personal and
 advertising injury" as follows:

SECTION I – COVERAGES

1. Insuring Agreement

We will pay on behalf of the insured those sums in excess of "scheduled underlying insurance," "unscheduled underlying insurance" or the "retained limit" that the insured becomes legally obligated to pay as "ultimate net loss" because of "bodily injury," "property damage" or "personal and advertising injury" to which this insurance applies.

a. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "incident" anywhere in the world;
- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) With respect to "bodily injury" or "property damage" that continues, changes or resumes so as to occur during more than one policy period, both of the following conditions are met:
 - (i) Prior to the policy period, no "authorized insured" knew that the "bodily injury" or "property damage" had occurred, in whole or in part; and
 - (ii) During the policy period, an "authorized insured" first knew that the "bodily injury" or "property damage" had occurred, in whole or in part.

For purposes of this Paragraph (1) a.(3) only, if (a) "bodily injury" or "property damage" that occurs during this policy period does not continue, change or resume after the termination of this policy period; and (b) no "authorized insured" first knows of this "bodily injury" or "property damage" until after the termination of this policy period, then such first knowledge will be deemed to be during this policy period.

* * *

d. This insurance applies to "personal and advertising injury" caused by an "incident" committed anywhere in the world during the policy period.

(See Ex. C [Form No. G-15057-C, p. 1].)

36. The CCC Umbrella Policy defines "bodily injury" as:

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury by that person at any time which results as a consequence of the bodily injury, sickness or disease.

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(See Ex. D [Form No. G-15057-C, p. 11].)

37. The CCC Umbrella Policy defines "incident" as:

9. "Incident"

- a. With respect to "bodily injury" and "property damage," "incident" means an occurrence. An occurrence means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- b. With respect to "personal and advertising injury," "incident" means an offense arising out of your business.

(See Ex. C [Form No. G-15057-C, p. 12].)

38. The CCC Umbrella Policy defines "Personal and Advertising Injury" as:

10. "Personal and Advertising Injury" means injury, including consequential "bodily injury," arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution or abuse of process;
- c. Wrongful eviction from, wrongful entry into, or the invasion of the right of private occupancy of a room, dwelling or premises that a person occupies committed by or on behalf of its owner, landlord or lessor;
- d. Discrimination, unless such insurance is prohibited by law;
- e. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- f. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- g. The use of another's advertising idea in your "advertisement";
- h. Infringing upon another's copyright, trade dress or slogan in your "advertisement."

(See Ex. C [Form No. G-15057-C, p. 12].)

39. The CCC Umbrella Policy defines "property damage" as follows:

12. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss shall be deemed to occur at the time of the occurrence that caused it.

For the purposes of this insurance, "electronic data" is not tangible property. (See Ex. C [Form No. G-15057-C, p. 13].)

40. The CCC Umbrella Policy defines "retained limit," "scheduled underlying insurance," "ultimate net loss," "underlying insurer," and "unscheduled underlying insurance" as follows:

16. "Retained limit" means the amount stated as such in the Declarations. The "retained limit" is retained and payable by the insured as respects all "incidents" not covered by "scheduled underlying insurance" or by "unscheduled underlying insurance."

17. "Scheduled underlying insurance" means the insurance policies listed in the Schedule of Underlying Insurance including renewal or replacement of such contracts which are not more restrictive than those listed in the aforementioned Schedule of Underlying Insurance.

18. "Ultimate net loss"

- a. "Ultimate net loss" means the actual damages the insured is legally obligated to pay, either through:

(1) Final adjudication on the merits; or

(2) Through compromise settlement with our written consent or direction;

because of "incident(s)" covered by this policy.

However, it includes the above mentioned sums only after deducting all other recoveries and salvages.

b. "Ultimate net loss" does not include the following:

(1) Costs or expenses related to:

1 (a) Litigation;

2 (b) Settlement;

3
4 (c) Adjustment; or

5 (d) Appeals;

6 nor costs or expenses incident to the same which an "underlying insurer" has paid, incurred
7 or is obligated to pay to or on behalf of the insured;

8 (2) Pre-judgment interest;

9 (3) Office costs and expenses and salaries and expenses of the employees of an insured;

10 (4) Our office costs and expenses and salaries of our employees; or

11 (5) General retainer and/or monitoring fees of counsel retained by the insured.

12
13 **19. "Underlying insurer"** means an insurer whose policy covers "bodily injury," "property
14 damage" or "personal and advertising injury" also covered by this policy but does not include insurers
15 whose policies were purchased specifically to be in excess of this policy. It includes all insurers
providing:

16 a. "Unscheduled underlying insurance"; and

17 b. "Scheduled underlying insurance."

18
19 **20. "Unscheduled underlying insurance"**

20 a. "Unscheduled underlying insurance" means insurance policies available to an insured,
21 whether:

22 (1) Primary;

23 (2) Excess;

24 (3) Excess-contingent; or

25 (4) Otherwise;

26
27 except the policies listed in the Schedule of Underlying Insurance.
28

1 to such law; or

2 (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or

3 (3) Any statute, ordinance or regulation, other than the TCPA or the CAN-SPAM Act of 2003,
4 that prohibits or limits the sending, transmitting, communicating or distribution of
5 material or information.

(See Ex. C [Form No. G-15057-C, p. 6].)

6 43. The CCC Umbrella Policy contains a “Financial Service Company As Insured”
7 endorsement, which provides in relevant part that “[t]his insurance does not apply to . . . “property
8 damage,” or “personal and advertising injury” arising out of:

9 * * *

10 3. Lending, or arranging for the lending of, money, including credit card, debit card,
11 leasing or mortgage operations or activities of interbank transfers;

12 4. Repossession of real or personal property from a borrower or acting as an assignee
13 for the benefit of creditors;

14 5. Checking or reporting of credit . . .”

15 (See Ex. C [Form No. G-147178-B].)

16 44. Under Section II – the CCC umbrella policy contains the following “WHO IS AN
17 INSURED” provision:

18 * * *

19 2. Insured means the Named Insured and:

20 * * *

21 c. Any other persons or organizations included as an insured under the provision of the
22 ‘scheduled underlying insurance’ shown in the Declarations of this policy and then only
23 for the same coverage, except for limits of insurance afforded under such “scheduled
underlying insurance.”

(See Ex. C [Form No. G-15057-C, p. 7].)

24 45. In addition to the foregoing provisions, TPI and CCC plead all other conditions,
25 terms, warranties, limits, definitions and exclusions of the TPI Primary and CCC Umbrella Policies
26 that may also be found to be applicable, as TPI’s and CCC’s investigation of this matter continues,
27 and they reserve the right to further amend this Complaint as additional and/or more specific
28 information becomes available.

COUNT I

**FOR DECLARATORY JUDGMENT THAT TPI
DOES NOT OWE A DUTY TO DEFEND**

46. TPI hereby incorporates and re-alleges the allegations in paragraphs 1 – 45 above as if fully set forth herein.

47. TPI does not owe a duty to defend Cash 1 in the Underlying Suit under the TPI Primary Policy for the following reasons:

- a. The Underlying Suit does not allege “bodily injury.”
- b. The Underlying Suit does not allege “property damage.”
- c. The Underlying Suit does not allege “personal and advertising injury.”
- d. Even if the Underlying Suit were to seek damages for “bodily injury” or “property damage,” which it does not, any alleged “bodily injury” or “property damage” was not caused by an “occurrence” during the primary policy period.
- e. Even if the Underlying Suit were to seek damages for “personal and advertising injury,” which it does not, any alleged “personal and advertising injury” was not caused by “offense” during the primary policy period.
- f. Even if the Underlying Suit were to seek damages for “bodily injury” or “property damage,” which it does not, the “Expected or Intended Injury” exclusion bars coverage.
- g. Even if the Underlying Suit were to seek damages for “bodily injury” or “property damage” caused by an “occurrence” during the primary policy period, which it does not, the “Recording and Distribution of Material” exclusion bars coverage.
- h. Even if the Underlying Suit were to seek damages for “personal and advertising injury” caused by an offense committed during the primary policy period, which it does not, the “Recording and Distribution of Material” exclusion bars coverage.
- i. Even if the Underlying Suit alleged “personal and advertising injury” caused by an offense committed during the primary policy period, which it does not, the TPI Primary Policy excludes coverage for “personal and advertising injury” “[c]aused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict ‘personal and advertising injury.’”
- j. Even if the Underlying Suit were to seek damages for “personal and advertising injury” caused by an offense committed during the primary policy period, which it does not, the TPI Primary Policy excludes coverage for “personal and advertising

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injury” “[a]rising out of oral or written publication of material whose first publication took place before the beginning of the policy period.”

k. Even if the Underlying Suit were to seek damages for “bodily injury,” or “property damage” caused by an “occurrence” or “personal and advertising injury” caused by an offense during the policy period, the TPI Primary Policy excludes coverage for “[b]odily injury,” “property damage,” “personal and advertising injury” caused by the rendering or failure to render any professional service . . .”

l. The statutory damages awarded under the TCPA are punitive and/or penal damages and are not damages covered by a general liability policy as a matter of law and public policy.

m. Claims for injunctive relief do not seek “damages” as that term is used in the TPI Primary Policy.

48. Upon information and belief, Cash 1 disagrees with TPI’s coverage position and maintains that TPI owes a duty to defend Cash 1 in the Underlying Suit. Thus, an actual and immediate controversy exists among the parties.

49. Pursuant to 28 U.S.C. §§ 2201 and 2202, TPI seeks a judicial determination that it has no duty to defend Cash 1 in the Underlying Suit under the TPI Primary Policy.

COUNT II

FOR DECLARATORY JUDGMENT THAT TPI DOES NOT OWE A DUTY TO INDEMNIFY

50. TPI hereby incorporates and re-alleges the allegations in paragraphs 1 - 49 above as if fully set forth herein.

51. TPI does not owe a duty to indemnify Cash 1 for any judgment or settlement awarded against it in the Underlying Suit under the TPI Primary Policy for the following reasons:

a. The Underlying Suit does not allege a “bodily injury.”

b. The Underlying Suit does not allege “property damage.”

c. The Underlying Suit does not allege “personal and advertising injury.”

d. Even if the Underlying Suit were to seek damages for “bodily injury” or “property damage,” which it does not, any alleged “bodily injury” or “property damage” was not caused by an “occurrence” during the primary policy period.

- e. Even if the Underlying Suit were to seek damages for “personal and advertising injury,” which it does not, any alleged “personal and advertising injury” was not caused by “offense” during the primary policy period.
- f. Even if the Underlying Suit were to seek damages for “bodily injury” or “property damage,” which it does not, the “Expected or Intended Injury” exclusion bars coverage.
- g. Even if the Underlying Suit were to seek damages for “bodily injury” or “property damage” caused by an “occurrence” during the primary policy period, which it does not, the “Recording and Distribution of Material” exclusion bars coverage.
- h. Even if the Underlying Suit were to seek damages for “personal and advertising injury” caused by an offense committed during the primary policy period, which it does not, the “Recording and Distribution of Material” exclusion bars coverage.
- i. Even if the Underlying Suit were to seek damages for “personal and advertising injury” caused by an offense committed during the primary policy periods, which it does not, the TPI Primary Policy excludes coverage for “personal and advertising injury” “[c]aused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict ‘personal and advertising injury.’”
- j. Even if the Underlying Suit were to seek damages for “personal and advertising injury” caused by an offense committed during the primary policy period, which it does not, the TPI Primary Policy excludes coverage for “personal and advertising injury” “[a]rising out of oral or written publication of material whose first publication took place before the beginning of the policy period.”
- k. Even if the Underlying Suit were to seek damages for “bodily injury,” or “property damage” caused by an “occurrence” or “personal and advertising injury” caused by an offense during the policy period, the TPI Primary Policy excludes coverage for “[b]odily injury,’ ‘property damage,’ ‘personal and advertising injury’ caused by the rendering or failure to render any professional service . . .”
- l. The statutory damages awarded under the TCPA are punitive and/or penal damages and are not damages covered by a general liability policy as a matter of law and public policy.
- m. Claims for injunctive relief do not seek “damages” as that term is used in the TPI Primary Policy.

52. Upon information and belief, Cash 1 disagrees with TPI’s coverage position and maintains that TPI owes a duty to indemnify Cash 1 in the Underlying Suit. Thus, an actual and immediate controversy exists among the parties.

would violate the rights of another and would inflict ‘personal and advertising injury.’”

- j. Even if the Underlying Suit were to seek damages for “personal and advertising injury” caused by an “incident” committed during the CCC Umbrella Policy period, which it does not, the CCC Umbrella Policy excludes coverage for “personal and advertising injury” “[a]rising out of oral or written publication of material whose first publication took place before the beginning of the policy period.”
- k. Even if the Underlying Suit were to seek damages for “property damage” caused by an “occurrence” or “personal and advertising injury” caused by an offense, the CCC umbrella policy, under the “Financial Service Company as Insured” endorsement, precludes coverage for “property damage” or “personal and advertising injury” arising out of the “[l]ending or arranging for the lending of money” and/or the “[r]epossession of real or personal property from a borrower or acting as an assignee for the benefit of creditors . . .”
- l. The statutory damages awarded under the TCPA are punitive damages and are not damages covered by a general liability policy as a matter of law and public policy.
- m. Claims for injunctive relief do not seek “damages” as that term is used in the CCC Umbrella Policy.

56. Upon information and belief, Cash 1 disagrees with CCC’s coverage position and maintains that CCC owes a duty to defend Cash 1 in the Underlying Suit. Thus, an actual and immediate controversy exists among the parties.

57. Pursuant to 28 U.S.C. §§ 2201 and 2202, CCC seeks a judicial determination that it has no duty to defend Cash 1 in the Underlying Suit under the CCC Umbrella Policy.

COUNT IV

FOR DECLARATORY JUDGMENT THAT CCC DOES NOT OWE A DUTY TO INDEMNIFY

58. CCC hereby incorporates and re-alleges the allegations in paragraphs 1-57 above as if fully set forth herein.

59. CCC does not owe a duty to indemnify Cash 1 for any judgment or settlement awarded against it in the Underlying Suit under the Umbrella Policy for the following reasons:

- a. The Underlying Suit does not allege “bodily injury.”
- b. The Underlying Suit does not allege “property damage.”

- c. The Underlying Suit does not allege “personal and advertising injury.”
- d. Even if the Underlying Suit were to seek damages for “bodily injury” or “property damage,” which it does not, any alleged “bodily injury” or “property damage” was not caused by an “incident” during the policy period.
- e. Even if the Underlying Suit were to seek damages for “personal and advertising injury,” which it does not, any alleged “personal and advertising injury” was not caused by an “incident” during the policy period.
- f. Even if the Underlying Suit were to seek damages for “bodily injury” or “property damage,” which it does not, the “Expected or Intended Injury” exclusion bars coverage.
- g. Even if the Underlying Suit were to seek damages for “bodily injury” or “property damage” caused by an “incident” during the CCC Umbrella Policy period, which it does not, the “Do Not Call” exclusion bars coverage.
- h. Even if the Underlying Suit were to seek damages for “personal and advertising injury” caused by an “incident” committed during the CCC Umbrella Policy period, which it does not, the “Do Not Call” exclusion bars coverage.
- i. Even if the Underlying Suit were to seek damages for “personal and advertising injury” caused by an “incident” committed during the CCC Umbrella Policy period, which it does not, the CCC Umbrella Policy excludes coverage for “personal and advertising injury” “[a]rising out of oral or written publication of material whose first publication took place before the beginning of the policy period.”
- j. Even if the Underlying Suit were to seek damages for “personal and advertising injury” caused by an “incident” committed during the CCC Umbrella Policy period, which it does not, the CCC Umbrella Policy excludes coverage for “personal and advertising injury” “[c]aused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict ‘personal and advertising injury.’”
- k. CCC has not duty to indemnify Cash 1 in the Underlying Suit under the CCC Umbrella Policy because the Umbrella Policy provides the same coverage as the “scheduled underlying insurance.”
- l. The statutory damages awarded under the TCPA are punitive and/or penal damages and are not damages covered by a general liability policy as a matter of law and public policy.
- m. Claims for injunctive relief do not seek “damages” as that term is used in the CCC Umbrella Policy.

60. Upon information and belief, Cash 1 disagrees with CCC’s coverage position and maintains that CCC owes a duty to indemnify Cash 1 in the Underlying Suit. Thus, an actual and

1 immediate controversy exists among the parties.

2 61. Pursuant to 28 U.S.C. §§ 2201 and 2202, CCC seeks a judicial determination that it
3 has no duty to indemnify Cash 1 under the CCC Umbrella Policy with respect to the Underlying
4 Suit.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs Transportation Insurance Company (TPI) and Continental
7 Casualty Company (CCC), respectfully pray for judgment against Cash 1 and Ms. Pratt as follows:

- 8
- 9 a. Declaring that TPI has no duty to defend Cash 1 in the Underlying Suit;
- 10 b. Declaring that TPI has no duty to indemnify Cash 1 in the Underlying Suit;
- 11 c. Declaring that CCC has no duty to defend Cash 1 in the Underlying Suit;
- 12 d. Declaring that CCC has no duty to indemnify Cash 1 in the Underlying Suit;
- 13 e. Awarding TPI and CCC their costs for this suit; and
- 14 f. Awarding TPI and CCC such other and further relief as this Court deems just.
- 15

16 DATED this 13th day of November, 2013

17 LEWIS BRISBOIS BISGAARD & SMITH LLP

18

19 By /s/ Jeffrey D. Olster

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21 Nevada Bar No. 008864
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25 *TRANSPORTATION INSURANCE COMPANY and*
26 *CONTINENTAL CASUALTY COMPANY*
27
28

JURY DEMAND

Pursuant to F.R.C.P. 38, Plaintiffs hereby demand a trial by jury in this matter.

DATED this 13th day of November, 2013

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Jeffrey D. Olster

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